THE ABORTION LAW: A REFORM

by

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PERAKUAN KEIZINAN

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PREFACE

The purpose of this paper is to inquire into the much discussed and much debated subject of abortion. Although this is an emotive subject wrought with much controversy, the writer has nevertheless not been deterred from writing on it. This is in view of the tremendous social implications attendant on the laws regulating the practice of abortion.

The writer welcomes this opportunity to thank the following who have rendered their ready assistance and co-operation and thus made this paper possible: Prof. Puvan, Prof. Paul Chen, Prof. Sen, Prof. Beng Chay Giap of the Medical Faculty, University of Malaya; Dr. Cherian of the Kuala Lumpur General Hospital; Dr. Choong Sim Poey of the Malaysian Medical Association; the personnel of the National Family Planning Board, Selangor Family Planning Association and the Ministry of Health.

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Chapter I

INTRODUCTION

Today 58% of the world's population live in countries with legalized or liberalized abortion (legalized abortion meaning abortion on demand and liberalized abortion meaning abortion is permitted only under certain conditions). Five of the six most populous countries in the world - China, India, United States, Japan and Soviet Union - permit abortion on demand in early pregnancy.[1] That abortion is becoming increasingly popular is an undeniable fact. Even in those countries where abortion is not permitted save where the life of the mother is ~~not~~ in danger, illegal abortions thrive. In our own country of Malaysia, despite the law against abortion, illegal abortions still continue, often at the expense of the health of the mother especially when carried out by unqualified abortionists. The health hazards created by such abortionists have been a source of much concern in our country and the medical profession have time and again renewed their call for liberalized abortion. While the latter seek for a more liberal abortion law in order to protect the health of mothers, they have acknowledged the risks attendant on abortion, even when done by a qualified medical practitioner.

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1 Luke T. Lee J.D., Ph.D, 5 Largest Countries allow Legal Abortion on Broad Grounds, Population Report Service F, April 1973.

Granted that illegal abortions exist in Malaysia, the question is whether a legalized or liberalized abortion law should be introduced in Malaysia. Should such a reform be acceptable, the next crucial question is, to what extent should the law be reformed taking into consideration the risks to health accompanying abortions and the presence and effectiveness of alternative methods to combat problems arising from a restrictive abortion law.

This paper examines the present Malaysian law on abortion and attempts to consider whether there is a need for a reform through an examination of the rationale behind it. Should there be such a need, the writer then proposes to examine the extent to which the need for reform exists.

Although the matter will be viewed from the perspective of the Malaysian situation, greater attention will be focused on the situation in Peninsular Malaysia. Some attention will also be paid to the Islamic position on abortion since Islam is the religion of the Federation.[2]

It is indisputable that the subject of abortion, a term which will be defined in the following chapter, is a highly controvesial one involving moral, social, legal, religious, medical and psychological aspects and values. The writer seeks to forward an objective view as is possible and to arrive at a conclusion which may be most

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2 Article 3(1) of the Federal Constitution, Malaysia, Reprint No.4 of 1970.

suited to our present Malaysian context. However, certain questions require further research beyond the scope of the present paper and in such circumstances, the questions are left open to be settled by a deeper research. Also, as many relevant Malaysian statistics on the subject are unavailable, reliance has had to be placed on the experiences of other countries, but adapted to the local context.

Chapter II

THE PRESENT LAW

Our present abortion law is laid out in Sections 312 to 316 of the Penal Code.[3] The provisions apply to Peninsular Malaysia. However, identical provisions exist for Sabah and Sarawak save for the degree of punishment meted out.[4]

The section which concerns us basically is S312.[5] Here the word "voluntarily" is defined in S39 of the Penal Code: "A person is said to cause an effect voluntarily when he caused it by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it." "A woman with child" means pregnant as opposed to "quick with child" which refers to that stage of pregnancy where the movements of the foetus are felt by the mother.

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3 Penal Code (F.M.S.Cap 45) Reprint No.2 of 1971.

4 See Sarawak Penal Code, Laws of Sarawak, 1958 Vol II Chpt 57.
See Penal Code (No.3 of 1959)
See Laws of North Borneo 1959, Ordinances and Subsdiary legislation.

5 S312: Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to three years, or with five, or with both; and if the woman be quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall be liable to fine.

This generally occurs between the 16th - 18th week for the multiparious woman and between the 18th - 20th week for the nonparious woman.[6] Medically a distinction is made at the 8th week of gestation for at the 8th week and below, the "child" is termed an embryo and only when it has developed an external form of human resemblance, is it termed a foetus.[7]

"To miscarry" legally means "the premature expulsion of the product of conception and ovum or a foetus from the uterus, at any period before the full term is reached."[8] Medically three distinct terms are used, viz., abortion, miscarriage and premature labour. The term abortion is used only when an ovum is expelled within the first three months of pregnancy; miscarriage denotes expulsion from the 4th - 7th month of gestation before viability; premature labour refers to the delivery of a viable child.[9] Legally no such distinction is made as miscarriage refers to the premature expulsion of product of conception "at any period before the full term is reached." Legally, the terms miscarriage and abortion are used synonymously.[10] The question is, should

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6 This fact was obtained through an interview with Professor Sen of the University Hospital.

7 Bernard M. Dickens, Abortion and the Law, p29

8 Sir Hari Singh Gour, Penal Law of India Vol III p2576
See also Ratanlal, The Law of Crimes, 22nd Edition, p836

9 Sir Hari Singh Gour loc. cit p2569

10 Nelson, India Penal Code Vol 2, p1740

not the legal term conform with the medical especially considering that the provision greatly concerns the medical profession.

Under S312 only abortion[11] which is induced is punishable and not natural abortion which occurs spontaneously. The writer shall use the term in the former sense.

Induced abortion is legal only when it is done "in good faith for the purpose of saving the life of the woman." Does this mean that abortion can be induced only where the life of the mother is in danger? What of the threat of suicide? If the threat is genuine, would it justify an abortion under our law? In the English case of Rex v Bourne[12], McNaughten J. held that "for the purpose of preserving the life of the mother" ought to be reasonably construed and "if the doctor is of the opinion on reasonable grounds and with adequate knowledge that the probable consequence of the continued pregnancy will make the woman a physical or mental wreck, the jury is entitled to take the view that the doctor, who under

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11 The writer shall use the term abortion to mean miscarriage as legally defined i.e. "the premature expulsion of the product of conception and ovum or a foetus from the uterus, at any period before the full term is reached".

12 1939 1KB 687. Per McNaughten J. p.694. The facts of the case were that an eminent gynaecologist, Bourne, was charged with the abortion of a 14 yr old girl who had been raped. He had performed the operation without any fee and with the consent of the girl's parents after consulting another doctor.

these circumstances and in that belief operates, is operating for the purpose of preserving the life of the mother." The case therefore gives a broader interpretation to the phrase "preserving the life of the mother." However, to justify an abortion here relying on Bourne's case, on grounds of health where the life of the mother is not in imminent danger, is to do so on rather slender grounds. The decision in Bourne's case is not binding in our Courts and serving only as judicial authority, it can be overruled at any time. Moreover, the case involved very special circumstances in that it concerned a rape case where the victim was only fourteen years old and therefore physically and mentally unable to carry the pregnancy to term. The extent of the legality of therapeutic abortions i.e. abortion on medical grounds, in Malaysia, is therefore vague.

"There can be no offence under this section unless there are products of conception."[13] This requirement that the woman must be "with child" poses a problem where Menstrual Regulation (MR) is concerned. MR is so called because it is a procedure which serves to bring on the menses of the woman who has missed it and in so doing, any products of conception present will be removed. However, the procedure is rarely used for such a purpose but is instead now used to perform abortion when the

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13 Munah Binti Ali v PP [1958] MLJ C.A. Per Thompson C.J. at p159.

foetus is 8 weeks and below. In Malaysia, pregnancy tests[14] can only be carried out at the 6th week of gestation and when MR is performed below 6 weeks no such tests are done. Even when MR is performed after 6 weeks, these tests are not conducted because the doctors believe that so long as they remain ignorant whether the woman is pregnant or not, they are legally protected, their only intention being (so they say) to regulate the menses of the woman.[15] So long as no pregnancy tests are done, MR appears to be conferred with a legal status. Is this the legal position? The writer submits that where pregnancy tests are possible, doctors are under a legal obligation to conduct such tests and to observe the law. What of the position where the tests are not possible? An important fact to note is that S312 does not require intention to be present but only that the person does the act voluntarily. Having regard to the definition given in S39 of the Penal Code whereby the consequences need not be certain but only likely or probable consequences and the likelihood or probability is known to the doer,[16] it would appear that

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14 These tests are used to determine whether the woman is pregnant. In more advanced countries, tests are available which can be used even when the pregnancy is below 6 weeks. This fact was gathered from interviews with several gynaecologists.

15 This fact was derived through interviews with gynaecologists, some of whom performed MR but who would prefer to remain anonymous.

16 Ratanlal, The Law of Crimes, (1971) p81.

even MR conducted below 6 weeks is illegal. This is because more often than not the doctor knows that the woman has come for an abortion and the likelihood of products of conception being present is well known to him; and medically it is possible to test, after the procedure has been conducted, whether any products of conception were present and therefore of proving that the woman was indeed "with child". Nevertheless, although legally it is submitted that MR constitutes abortion within the meaning of S312, practically it is virtually impossible to bring a case against doctors performing it since no pregnancy tests are performed. No case will ever be successfully brought against them unless they are caught in the very act of "aborting" and the products so removed are tested.

S313[17] relates to where the woman does not consent.

S314[18] - the words here are wider than in the last two sections in that under this section the mere doing of an act with intent to cause abortion becomes punishable. It is immaterial whether the abortion was in fact caused.[19]

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17 S313: Whoever commits the offence defined in S312, without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

18 S314: Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such a woman, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

19 Sir Hari Singh Gour op.cit.N.8 p2576

However, unlike the previous sections, S314 requires intention to be present.

On the other hand, S315[20] is aimed at foeticide while in the womb after the foetus has developed sufficiently to assume the human form.[21]

The offence under S316[22] can only be committed after the woman becomes "quick with child" and before its birth. The act is done against the mother with the intention which brings it within S299 of the Penal Code.[23]

An interesting point to note is that the present law provides for varying degrees of punishment depending on the stage of gestation. Under S312 the punishment is increased

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20 S315: Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to ten years, or with fine, or with both.

21 Sir Hari Singh Gour op.cit.n.8 p2578

22 S316: Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

23 Sir Hari Singh Gour loc.cit. p2579. See also Ratanlal, The Law of Crimes, 22nd Edition, p840.
See too Ranchhoddas and Thakore, Law of Crimes, 1966, p793.

if the woman is "quick with child" as the old notion was that the foetus became first endowed with life when quickening has occurred.[24] A relevant fact to note is that although life was believed to exist only after quickening, yet punishment is still meted out for abortion induced before quickening. Moreover, although life may be believed to exist thereafter, yet the offence of abortion is not considered murder. Under S315, the accused is held more responsible owing to the advanced stage of foetal life.[25]

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24 Sir Hari Singh Gour op.cit.n.8 p2568.

25 Ibid p.2578.

Chapter III

THE NEED FOR REFORM

In Chapter II we examined the present law on abortion and we saw how the law, especially S312, as it now exists, is far from satisfactory. This in itself calls for a reassessment of the present law. This chapter discusses in greater depth the question of the need for reform. The rationale behind the law against abortion is threefold. Firstly, abortion is punished because it is morally offensive; secondly, it involves the performance of an operation dangerous to the life of the mother; and thirdly, it arrests the growth of population.[26] Through an examination of the extent to which the rationale is still applicable, it is hoped that the reader will share the writer's conviction that the present law does need reforming.

a) Moral

In times past abortion at any stage has been prohibited because it was felt to be morally offensive to society. But is such an act still morally offensive?

The occurrence of a significant number of illegal abortions despite the law against them renders the strength of the moral basis of the restrictive law a questionable one. No official figures on illegal abortions are obtainable and only mere estimates are obtained. In Britain the estimated

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26 Sir Hari Singh Gour op.cit.n.8 p2568

number is between 10,000 to 250,000 per annum.[27] In Singapore it is about 5000 p.a.[28] In Malaysia, although illegal abortions persist, the exact extent of the practice is unknown. Dr Hee Tian Lai, when he spoke in Parliament, said about 7000 illegal abortion take place in Malaysia every year.[29] This appears to be a modest estimate as compared to the finding by the National Family Planning Board (NFPB) that about 30,000 cases p.a. are admitted into Government hospitals as a result of illegal abortions.[30] Yet how many more escape notice because the abortions were successfully performed? Despite the widespread disregard for the law, few prosecutions have ever been brought to our Courts.[31] Such disregard for the law and the absence of public pressure for its enforcement surely demands a reassessment of the present abortion law. The ineffectiveness of legal provisions should form the "mainspring for reform ... one may argue that the inability of the law to prevent

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27 Callahan, Abortions Law Choice and Morality (1970) p141

28 Chua Sian Chin, Abortion Bill, Parliamentary Debates of Republic of Singapore, Part II First Session of the Second Parliament, Vol 28.

29 Sunday Mail 10/11/74, The Law on Abortion - Time to Think Again.

30 Malay Mail 13/4/74, It's Up to You.

31 Figures on the number of prosecutions are unobtainable from neither the Dept. of Statistics, A.G.'s Chambers, Crime Office nor Ministry of Health.

criminal abortions suggests that a different philosophy is called for limiting the problem by extending legal provisions within generally acceptable margins and asking how the crime arises and treating the causes."[32]

Moreover, illegal abortions performed by unqualified abortionists have given rise to a health problem in this country both by way of mortality and morbidity. Here again figures on the number of cases admitted into hospitals due to complications arising from illegal abortions are inaccurate as many of the patients do not want to reveal the true reasons for admission for fear of prosecution. Several deaths which are in fact due to criminal abortions are often classified as death from unspecified fevers.

Deaths from Fevers Unspecified

Year	Female deaths (age 15-44) due to fevers unspecified
1969	1326
1970	1275
1971	1182
1972	906

Table I[33]

32 Bernard M. Dickens op.cit.n.7 p108

33 A paper on Abortion, by Prof. Puvan of the University Hospital p4.

It is possible that a fair proportion of the above were due to septic abortions.[34] As noted earlier, the NFPB recently estimated that about 30,000 cases are admitted into Government hospitals for complications arising from illegal abortions.[35] A number of these are admitted as a result of septic abortion which commonly arises from criminal abortions.

Total number of septic abortion cases admitted to Government hospitals in Peninsular Malaysia per annum.

Year	No. of septic abortion cases p.a.	Total admissions	% to total admissions
1970	814	489,532	0.16
1971	756	502,371	0.15
1972	1076	551,888	0.19
1973	875	571,789	0.15
1974	642	606,790	0.10

Table II[36]

The health hazard arising from illegal abortions therefore calls for a re-examination of the present law.

Opinion polls which have been conducted in several other countries show a general trend of decreasing social disapproval towards abortion. The Malaysian Medical Association conducted a survey in 1974 among its members. The results

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34 Ibid p4

35 Malay Mail op.cit.n.30

36 Record Division, Ministry of Health, Malaysia.

indicated a general desire for reform (see table below).

Do you think there is a need to change the Present Law?

Response	Number	Percentage
Yes	462	85.40
No	75	13.86
Don't know	4	0.74
Total	541	100.00

Table III[37]

The table shows that while 84.5% of those interviewed were in favour of reform, only 13.86% were against.

In the same survey it was found that there is a significant incidence of abortion requests each month which reflects decreasing public disapproval towards abortion.

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37 Malaysian Medical Association Questionaire for all members prepared by the select Committee on Abortion Law Reform. 541 of the total membership of 1842 responded to the question. Address of the Association is MMA House, 124 Jalan Pahang, Kuala Lumpur.

Incidence of Abortions Requests and Post Abortion Complications in General Practice.

373 out of 541 answered this section

Incidence Per Month	None	Less than 1	1-5	6-10	11-20	21-40	41-80	80+
Requests for Abortion	38	23	153	70	45	26	13	5
	10.19%	6.16%	41.02%	18.77%	12.06%	6.97%	3.49%	1.34%
Abortion Computed	97	63	170	29	9	3	1	1
	26%	16.89%	45.58%	7.77%	2.41%	0.8%	0.27%	0.27%

Table IV[38]

Only 10.19% had received no requests for abortion while the majority received 1-5 per month. 23.86% received more than 10 requests per month. The results reveal an unusually high incidence of abortion requests.

While it is true that the prevalence of illegal abortions and changing public opinions indicate a weakening of the moral basis upon which the restrictive law is founded, yet it cannot be asserted that the moral basis for an abortion law no longer exists. Even the strongest proponent for legalized abortion cannot consider abortion as just an "ordinary" operation for even if it does not constitute the taking away of life, it constitutes the taking away of potential life in the process of development. A family planning worker who visited Eastern Europe which has liberal abortion laws said that doctors there still find it difficult

38 MMA survey op.cit.n.37

to view abortion impartially as an "ordinary operation".[39] An abortion decision still evokes a moral conflict and provokes undesirable psychological consequences in several cases, despite legalization. In Japan, a Mianichi survey in 1965 among 3600 married women noted that "those who have ever experienced abortion did not undergo the operation without any moral and psychological conflict". Only 18% were indifferent.[40] Another small survey in Nagoya in 1964 found only 8% seeing it as nothing bad while 59% believed it to be very bad.[41] As so clearly expressed by Muramatsu in 'Japan's Experience in Family Planning', "Truly a woman undergoing this experience is not happy about it and often is remorseful after she had gone through it... but at the same time one has to note that many women are so firmly determined in their decision on family limitation that they do resort to abortion, though reluctantly, when they are faced with the choice between an unwanted pregnancy and the anticipated consequence of having an additional child ... In short induced abortion is by no means a commendable thing; not infrequently pragmatic or realistic considerations outweigh moral or other personal restraints in the ultimate decision on this matter."[42]

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39 Paul Ferris, The Nameless (1966 & 67) p113

40 Callahan op.cit.n.27 p260

41 Ibid p261

42 Ibid p261

The morality of an abortion revolves around the issue of whether the foetus is life and how much value is attached to it. There are those who believe that life begins at conception and abortion is therefore equivalent to murder. Some attach no value to the foetus save what can be attributed to it in accordance with society's needs. Others believe that some degree of development is required before one can speak of the foetus as life. However, the controversy lies in the degree of development required.[43]

It has been found that abortion done below 8 weeks (i.e. Menstrual Regulation) provokes little adverse reaction. A study on 80 Menstrual Regulation patients in the University hospital revealed that 71 of the patients felt relieved and only 3 felt guilty about it.[44] The experience of Singapore and India support this conclusion too. However, to what extent the lack of guilt can be attributed to the fact that no pregnancy tests are carried out is an open question. Nevertheless, it is submitted that an abortion done below 8 weeks is generally less offensive, especially to the doctor as the embryo is not brought out as a whole but only in bits and pieces. Even medically a distinction is made at the 8th week when it is no longer called an embryo but a foetus. At

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43 Callahan op.cit.n.27 p384, 393.

44 Professor Puvan op.cit.n.33 p6.

the 12th week the foetus has more visibly assumed a human form with a head the size of a ping pong ball. "You feel okay when you are just scraping out bits of blood clots, but when you have to abort a well formed baby it really makes you feel quite sick", was the opinion expressed by a Singapore gynaecologist.[45] Beyond 12 weeks the problem increases for not only do the risks to the woman increase considerably but the "medical staff find the ethical problems posed by the procedure more formidable".[46] After 24 weeks no country has permitted abortion, save where the life of the mother is in danger, because the foetus achieves viability thereafter.

Generally a pregnant woman's affinity towards the "child" within her grows with the proceeding stages of gestation. Therefore abortion in the later stages will generally evoke a greater moral and psychological response in the woman herself.

The cultural and religious background of the people will influence the degree of guilt feelings produced by an abortion too. Malaysia has a multi-racial society with varying religions and cultures. The three main races are the Malays, Chinese and Indians. The Malays have generally strong religious and cultural (which has been very much

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45 The Strait Times 28/11/74, Doctor's view on abortion up to 6 months.

46 Abortion: A World Survey, IPPF Newsletter Mar.1972.

influenced by the former) restraints in this regard. The Indians have equally strong religious restraints while for the Chinese cultural and religious bindings are less.[47] It is interesting to note that in traditional Chinese culture, the baby is named and considered part of the family only after it is one month, while in the traditional Malay community a dead 7 month old foetus is given a proper funeral.[48] Although liberalization or legalization of abortion may serve to alleviate guilt feelings that may arise, where cultural and religious restraints are strong, as in Japan, guilt feelings will continue to pervade the community.

Abortion therefore still poses a moral problem today, though to a much lesser degree than before. Any reform of the law needs to take into consideration "the general moral sense of the community if (it is) to be respected and enforced".[49]

b) Medical

Another rationale for the restrictive abortion law is that abortion involves the performance of an operation

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47 Professor Puvan op.cit.n.33 p5. An interview with Prof. Paul Chen of the Department of Social and Preventive Medicine confirmed these facts too.

48 This fact was derived from Prof. Paul Chen, an authority on Malaysian culture influencing women's attitudes towards pregnancy and children.

49 Hart: The Aims of the Criminal Law

dangerous to the life of the mother.[50] We now know that with the advance of medical science, the dangers involved in such an operation have been much reduced though not completely removed. That abortion still involves some degree of risks and that no technique of abortion is free from complications is accepted, and the medical risks entailed will still form a significant consideration in any reform of our Abortion Law.

The adverse effects attendant on an abortion can be generally classified as physical and psychological effects. The physical effects include mortality and morbidity. The latter includes such immediate non-fatal complications as haemorrage, rupture of the uterus, thrombosis, embolism, pevilointis and renal failure. Delayed effects such as chronic pelvis infection, sterility and increased danger for subsequent pregnancy are not uncommon too.[51] In a 1969 survey of the office of the Prime Minister of Japan, the following complications were listed:-

a) 9% sterility

b) 14% subsequent habitual spontaneous abortion

c) 400% increase in tubal pregnancies

d) 17% menstrual irregularities

e) 20-30% abdominal pain, dizziness, etc.[52]

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50 Sir Hari Singh Gour op.cit.n.8 p2568.

51 Medical Section of the Graduates Christian Fellowship, Singapore, Paper 8 (Report on the select Committee on the Abortion Bill and Voluntary Sterilization Bill, Parliament 6 of 1969).

52 Dr & Mrs J.C. Wilkes, Handbook on Abortion (1973) p77.

In the United States tubal pregnancies increased to 3.9% after abortion.[53] Psychological consequences include those on the patient and the medical staff. The degree to which they exist depend on factors such as culture, religion and stage of gestation. The table below may serve to illustrate the extent to which psychological sequelae can exist.

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53 Dr & Mrs J.C. Wilkes, op,cit.n.52 p130.

Psychological Sequelae from Legal and Illegal Abortions

Country and Sub-national Area	Sample Description	Reactions: Negative	Reactions: Positive	Reactions: No reaction, no change, ambivalent
England	120 women for 6 months after legal termination; physician assessment of their reaction	1% worse 5% temporarily worse, then no change	58% improved 19% temporarily improved, then no change.	9% no reaction 8% unknown
	Same as above; 118 patients' assessment of own reactions	3% dissatisfied	92% wholeheartedly satisfied	3% "acquiscent" 3% unknown
Japan	1026 married women aged 16-49, husband present.	35% felt sorry toward the foetus. 28% felt they had done something wrong. 4% were afraid of fecundity impairments.	0	18% did not feel anything in particular. 8% no answer.
Japan	200 rural wives aged 20-49; 183 (93%) returns; 50 women (27%) who admitted to abortion experience.	20% felt they had done something wrong. 35% felt pity for the foetus. 10% were afraid they could not bear any more children.	5% felt relieved and easy.	30% did not feel anything in particular.

Table V[54]

[54] Emily Campbell Moore-Cavan, International Inventory on Induced Abortion, (1974) p535.

However, it should be noted that the degree of isks involved varies with the stage of gestation. "The requency and severity of complications tend to increase with ne duration of pregnancy, being significantly greater in the econd then the first trimester."[55] Within the first trimester, n abortion done before the 8th week is medically safer than nat done thereafter. A review of 469 Menstrual Regulation ases at the Kandang Kerbau Hospital in Singapore found a omplication rate of 0.6% only.[56] But the long term effects f Menstrual Regulation are still unknown. After the 8th week he Menstrual Regulation procedure is no longer applicable nd a Dilation and Curettage (D & C) is done. This method s used in the first trimester i.e. within the first 12 weeks f pregnancy. It involves greater risks than Menstrual egulation and is usually done under anaesthetic and requires ospitalization. Vacuum Aspiration, another method used in he first trimester termination of pregnancy, is said to roduce less complications than a D & C.[57] As between the irst and second trimesters, the danger is very much increased n the latter. The Tietze series (39,508 abortions) show that

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5 Spontaneous and Induced Abortion, Report by WHO Scientific Group, WHO Technical Report Series No.461, Geneva 1970, p37.

6 Dr D. Vangadasalam, Prof. T.H. Lean, Dr. D. Edelman, MR - Review of 469 cases at Kandang Kerbau Hospital, Singapore. Congress of Obstretrics and Gynaecology, Kuala Lumpur 1974, p321, 325.

7 Campbell Moore-Cavan op.cit.n.54 p471.

complications for abortion in the second trimester is 3.2 to 4 times higher than in the first, and the percentage of major complications is about 3 times higher.[58] The following table will further illustrate this.

Complications of Legal Abortions by Gestation: Rate per 100 procedures.

Country	Period Covered	Period of Gestation	No. of Abortions	% women with complications per 100 procedures
England[59]	1971-3	12 wks or less than 12	531	13.7
		13 or more than 13 wks	117	29.1
Singapore[59]	1971-3	12 or less than 12 wks	1818	3.8
		13 or more than 13 wks	149	24.2
U.S.[59]	1971-3	12 or less than 12 wks	1027	9.5
		13 or more than 13 wks	815	27
India[60]	1971	12 or less than 12 wks	-	13.5
		13 or more than 13 wks	-	28

Table VI[61]

58 C.S. Dawn, R.M. Ghosh, Safety and Complications of Legal Abortion Procedures (Transactions of Scientific Papers by IFRP Contributors, at the 17th All India Obstretrics and Gynaecology Congress held at Agra, Feb.5-8, 1974) p89,93.

59 Campbell Moore-Cavan op.cit.n.54 p517.

60 C.S. Dawn loc.cit. p89, 94.

61 The compilation of the figures for the first 3 countries was taken from Campbell Moore-Cavan's International

In England and India the complications rate for abortions performed after 12 weeks is more than twice that performed below 12 weeks. In the U.S. the complication rate for abortion after 12 weeks is about 3 times higher than that, performed in the first trimester, while in Singapore it is seen to be about 5 times higher.

c) Demographic

The third reason why abortion is punished is because it arrests the growth of population essential to the existence and welfare of society.[62] However, population growth has now become a world wide problem and Malaysia is no exception with her high population growth rate of 2.7% in 1972.[63] The target is to reach a population growth rate of 2% by 1985.[64] Nevertheless, Abortion laws have demographic impacts and if it is realized that population control does not exist in isolation but in conjunction with social and economic development, and forms an integral part of the latter, the importance of the State having some measure of control over the abortion rate becomes evident. In fact it was this realization of the important link between population growth and socio-economic development goals which led the Cabinet decision in 1964 to adopt a National Family Planning Programme as a government policy.[65]

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62 Sir Hari Singh Gour op.cit.n.8 p2568

63 Record Division, Ministry of Health, Malaysia.

64 Ibid

65 Malaysia and Its National Family Planning Programme, NFPB, Kuala Lumpur, Malaysia, March 1970 p3.

Through an examination of the present law and its rationale, the writer is of the opinion that there is a need for reform for although the grounds upon which our law is founded still exist, their strength have weakened to an extent sufficient to warrant a reassessment of the law. That our unduly restrictive law does not appear to accord with our changing moral, medical and demographic climate is a fact which should not be ignored.

Chapter IV

THE EXTENT OF THE NEED FOR REFORM

In the previous chapter we have seen how that the present law needs reforming. However, the question is, to what extent does this need exist? Not only medical, moral and demographic factors are to be considered in deciding the extent of the need for reform, but also the present situation in the Malaysian society and its relevant needs and problems. The question is to what extent should any value that may be attached to the foetus and the medical objections to abortion be supervened in order to meet these needs and problems. The presence and effectiveness of alternative methods in meeting the needs is relevant too.

The matter will be dealt with under the various grounds summarized as medical, eugenic, humanitarian, socio-economic and abortion on demand.

a) Medical

Should abortion be legalized where there is serious risk of grave injury to her physical or mental health? We know that under our present law abortion is legal only "for the purpose of saving the life of the woman."[66] This, as we have seen, will definitely cover cases where the life of the woman is in imminent danger. However, it is less clear

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66 s312, Penal Code op.cit.n.3

whether it covers abortion performed where the life is not in imminent danger but there is serious risk of grave injury to her health, physical or mental. We need to consider now, whether the law should be reformed to explicitly include abortions on such grounds.

Would the public favour a reform here? Opinion polls conducted in other countries reveal a high degree of acceptability here. An interview with 2137 female electors in 1966 in Great Britain saw 85% in favour of abortion on medical grounds.[67] Interviews with a national sample of adults in 1966 in the United States found 77% in favour.[68] In Malaysia the MMA conducted a survey among its own members and found 98.05% and 94.37% giving a favourable response to abortion when the mother's physical health and the mother's mental health respectively, is in danger.[69]

Although public opinion in other countries and opinions of our doctors favour a reform, yet there is still the question of medical risks involved in abortion. The point is whether there is such a need for reform of the law in this respect as would justify the risks involved, especially

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67 Campbell Moore-Cavan op.cit.n.54 pl65.

68 Ibid pl77.

69 MMA op.cit.n.37.

abortion in the later stages of pregnancy.

The need to permit abortion where there is serious risk of grave injury to the physical or mental health of the mother becomes apparent when we realize that medically it is now accepted that life is inextricably linked with health, which includes physical or mental health. This contention receives support from the case of Rex v Bourne.[70] In this case the accused, Mr Bourne, in his defence said, " .... I can say there is a large group whose health may be dangered but whose life almost certainly will not be sacrificed. There is a large body of material between the two extremes in which it is not really possible to say how far life will be in danger, but we find of course that health is depressed to such an extent that life is shortened, such as cardiac cases, so that you may say that their life is in danger because death may occur within measurable distance of the time of their labour."[71] This view receives the approval of the Judge, McNaughten, who held that there is no clear distinction between danger to life and danger to health since "life depends on health and it may be that health is so gravely impaired that death results."[72]

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70 Rex v Bourne op.cit.n.12 p687.

71 Rex v Bourne [1938] 3AllER p620.

72 Rex v Bourne loc.cit. per McNaughten J. at p692.

Since life is so linked up with health, the phrase "for the purpose of saving the life of the woman" should receive the wider interpretation given in Bourne's case. As previously discussed[73] Bourne's case does not form a solid basis for the performance of therapeutic abortion where the life of the woman is not in imminent danger. We need therefore to reform the law to correct the ambiguities. The writer submits that the law should be reformed to permit abortion where there is serious risk of grave injury to the woman's health. This would mean that the health i.e. physical or mental, of the woman is "depressed to such an extent that life is shortened" or where the continued pregnancy will cause permanent injury to her health. It should be noted that the Judge in the case, said that the probable consequence of the pregnancy would be to make her a "physical or mental wreck."[74] (emphasis supplied). This indicates a reasonably high degree of serious effect on her health. The phrase "where there is serious risk of grave injury to her physical or mental health" should not therefore be so loosely interpreted as to allow abortion whenever the health of the woman is affected in some form or another.

b) Eugenic

Several conditions are known to carry high risks

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73 Refer Chapter II p6 & 7.

74 Rex v Bourne op.cit.n.12 per MaNaughten J at p694.

of deformed children. Certain conditions are inherited while others may be due to infection of the mother in the early stages of pregnancy. Early embryonic processes are injured by rubella virus in about 50%, 25% and 10% of patients in the first, second and third months of pregnancy respectively,[75] resulting in children with heart defects, cataracts or mental retardation. Anencephaly is another condition in which the brain of the child is unformed. Enzyme deficiencies, which has a genetic link i.e. a family history of congenital illnesses, result in children with gross mental retardation or multiple congenital malformation. In certain conditions such as rubella and anencephaly, certain chemical tests can be carried out at the 16th week of pregnancy and thereafter, which are able to indicate with reasonable certainty whether the foetus is deformed.[76]

Abortion on the eugenic ground has been found to be generally acceptable. 91% of the respondents in the 1966 survey in Great Britain on 2137 female electors were in favour of abortion on this ground.[77] The MMA survey

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75 Charles E. McLennan & Eugene C. Sandberg, Syphosis of Obstretrics, (1974) p312, 313.

76 Facts were obtained through interviews with Professor Sen of the U.M. and Dr. Cherian, both gynaecologists. While chemical tests exist for certain conditions only in Malaysia, in more advanced countries such tests are available for several other conditions too.

77 Campbell Moore-Cavan op.cit.n.54 p165.

found 95.8% of its members favouring abortion here.[78]

Countries which have legalized abortion here have nevertheless limited the period for abortion in view of the risk involved. The Singapore Abortion Act 1970 limited it to 16 weeks,[79] while the Indian Termination of Pregnancy Act 1971 limits it to 20 weeks.[80] The chemical tests are ineffective below 16 weeks and the abortion can therefore only be performed thereafter, at a stage which is known to involve greater risks than abortion in the first trimester. Some measure of risks will therefore be encountered and the question is whether the need justifies the risks. The writer thus sets out, in the following paragraphs, to discuss the need.

A child so handicapped often poses a hazard to the mother's physical and emotional energy and can cause strains in the family life. The writer has personally encountered cases in which family relationships have been strained because the attention of the mother is concentrated on the child. Such children, generally, are unable to live the normal life span too.

Often, an assumption is made that one has an obligation towards the possibly deformed foetus not to bring it into the world. However, no survey has ever been conducted

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78 MMA op.cit.n.37.

79 Singapore Abortion Act, March 1970, Cap 150.

80 Abortion: Medical & Socio-Economic Aspects, Seminar organized by the FPA of India, Nov.1972.

to prove that most deformed people would prefer not to have been born. Humans differ in their desire to live and a handicap is "no predicator of the strength of that desire."[81] The desire of such people to live depends very much too on society's attitudes towards them. An interview with a social welfare personnel[82] revealed that in the rural areas, such handicapped people are accepted as part of the community and little social stigma is attached to them. This is especially so in the Malay community where religion forms a strong influencing factor in enabling the people to accept such deformed people as from God too. However, in the urban areas where the community becomes more sophisticated, the reception is not so favourable.

Nevertheless, assuming that deformed people would prefer to be born, the question is whether their desire to live should take precedence over the well being of the mother and family whose interests are real at the time unlike those of the unborn child which are only potential. Changing moral values appear to favour the interests of the mother and family above that of the possibly deformed foetus,[83] and in fact, abortions on eugenic grounds are being performed in hospitals

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81 Callahan op.cit.n.27 p113.

82 Mrs E.N. Chong, Ministry of Social Welfare, Malaysia.

83 Refer to the results of the survey given on p33. See further Jerome M. Kumma, Abortion: Legal & Illegal at p.vii.
See also Campbell Moore-Cavan op.cit.n.54 at p131.

such as the University Hospital and General Hospital.[84]

Therefore the writer concludes that the adverse consequences that may well be incurred on the mother and family, and possibly the child too, justify abortion despite the medical risks that would be involved. However, to keep the risks down to the minimum possible, the period for abortion should be limited to one where it can be reasonably safely performed. The opinions of at least two qualified medical practitioners should be sought to confirm that she clearly desires an abortion.

c) Rape

The following figures, obtained from the Criminal Record Office, reflect to a certain extent the frequency of the crime of rape in Malaysia.

Number of Reported Rape Cases for Malaysia per annum

Year	No. of cases per annum
1969	187
1970	190
1971	106
1972	231
1973	211
1974	262

Table VII[85]

4 This fact was obtained through interviews of certain gynaecologists from the U.H. and G.H.

5 Criminal Record Office, K. Lumpur.

The above figures comprise only the number of reported cases but there must be at least a fair proportion of cases unreported because of the social stigma attached to the crime. Although the number may not be many, and some cases do not in fact result in pregnancy, yet to a girl who is faced with the dilemma of bearing the child of a man who has violently forced himself on her, numbers are irrelevant. Dr. Glanville Williams observes, "It is hard to see how anyone can support a law that compells a girl to nourish within her body seed violently planted there by a sexual maniac."[86] A social stigma is often attached to the mother and child in such a situation. One cannot punish the mother and child any further for an action of another "at whose hands one has already suffered a major traumatic experience."[87]

The Malaysian population would surely be amenable to a reform of the law here? The MMA survey shows that 96.54% of its members are in favour of legalization[88] in this regard.

Granted that medical risks would be incurred, but surely the need, as discussed earlier, justifies the risks.

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86 See Bernard M. Dickens op.cit.n.7 where he quotes Glanville Williams at p118.

87 Prof. Wong Kin Kar op.cit.n.28.

88 MMA op.cit.n.37 Opinion polls overseas appear to favour abortion here too. See Campbell Moore-Cavan op.cit.n.54 at pp 165 & 131.

This is especially so when one considers that no suitable alternative exists such as contraceptives.

Nevertheless, the period for abortion should be limited to one which will be medically and morally acceptable, and yet sufficiently long enough to render it practically possible to prove the crime of rape as defined in S375 of the Penal Code. Where the victim is a virgin, rape can be easily proved medically. In such a situation the law should perhaps permit abortion on medical evidence of rape. However, the difficulty lies when the victim is not a virgin. In this case rape can only be proved through a Court trial. This will take time and this is when the law needs to extend the period for abortion to a limit where it will be practically possible to prove the crime.

d) Socio-economic

To legalize abortion on socio-economic ground would be to do so on very liberal grounds as the term is capable of wide interpretation. It would include considerations such as the economic position of the family, the last child still young, the couple having enough children, or the woman being single, or widowed, or separated. This area appears to evoke much greater controversy than those already discussed above.

Opinion polls in Britain and the United States reveal that only 18.4%[89] and 18%[90] respectively are in favour

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89 Campbell Moore-Cavan op.cit.n.54 p165.

90 Ibid p177.

of legalization in this respect, while in Malaysia 84.85%[91] of the doctors surveyed are in favour. The higher percentage in favour in Malaysia may be due to the fact that the question limited abortion to within 12 weeks only. Also, our less affluent society, where poverty and hardships are more common than in the more advanced countries, may have contributed to this. However, should any value so attached to the foetus and its right to life be equated with the socio-economic expediency of the individual? While it is generally true that the rights "of the mother who has already passed from the potential to the real, ... take precedence over those of the unborn child",[92] it is surely not <u>every</u> right of hers which is to take precedence over those of the unborn child? To say it is so is to deprive the unborn child of any value and rights whatsoever.

Medically we have seen the risks involved according to the various stages of gestation. Even if moral objections may not form a strong case against legalization here, there is the contention of the risks involved. This contention, granted, can be overcome where the need is real and weighty enough to warrant the risks. However, does the need here so justify the risks? This question can only be answered through an examination into the various reasons generally advocated to support legalization on the socio-economic ground. The writer shall

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91 MMA op.cit.n.37.

92 Prof. Wong Lin Kar quoting the Bishop of Exeter in the House of Lords Debates in Britain op.cit.n.28.

also consider the presence and effectiveness of alternative methods in meeting the need. The writer submits that where alternative methods are available, which are <u>safer</u> and effective, abortion should be discouraged in view of the risks involved.

i) <u>Population Control</u>

This is a factor which has often been denied since an outright claim that the reform is undertaken as a measure of population control would not appeal to human sensitivities. But an examination into the circumstances in the various countries at the time of the reform will reveal that the need for population control formed an important consideration in the decision to reform. When Japan legalized abortion in 1948 she was faced with the problem of population explosion caused by the post-war boom worsened by the situation of tremendous decrease in food production and the chaotic social conditions.[93] In India, the population ofmore than 500 million with 21 million being born per annum and the only slight success of the family planning programme at reducing the birth rate, neccessitated the introduction of the Abortion law in 1970.[94] Singapore has a limited area of about 200 sq. miles, with limited natural resources and with the second highest population density in the world - 8900 persons per

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93 Mr Conceicao op.cit.n.28. See also Bernard M. Dickens op.cit.n.7 at p12.

94 Callahan op.cit.n.27 p12.

sq. ml.[95] Her growth rate is 1.7% per annum.[96] One therefore finds it difficult to believe that the population problem did not form an important consideration in Singapore's decision to liberalize abortion in 1970 and legalize it in 1974. This conclusion receives further support when one recalls the words of her former Minister of Health, Yong Nyuk Lin, who said that in view of the population pressures in Singapore, resort would be made to "drastic solutions" if such methods were available.[97]

Does Malaysia have a population problem which demands a "drastic solution"? She has a population of about 10 million and a population density of 180.61 per sq. ml. in 1972 for West Malaysia, and 22.01 per sq. ml. in 1971 for East Malaysia.[98] The growth rate is 2.7% and the Government aims at reducing it to 2% by 1985.[99] Do we need to introduce abortion to achieve this or will our Family Planning Programme succeed in doing so?

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95 Chua Sian Chin op.cit.n.27 p12.

96 Dr. Margaret Loh, The Singapore National Family Planning Programme 1966-73, Singapore Family Planning & Population Board.

97 Yong Nyuk Lin, Minister of Health, Defences to ward off Singapore's Population Explosion - Family Planning & Legal Abortion, (Family Planning Series of 12 papers on Family Planning from Dec. 1965 - Dec. 1967).

98 Record Division, Ministry of Health, Malaysia.

99 Record Division, Ministry of Health, Malaysia.

The writer submits that the Programme can succeed in achieving this. To quote Dr. Ariffin Mazuki, the former director of the NFPB, "Abortion is alright where the problem of population growth is very acute. But there is no need to introduce abortion here because we are not aiming at a drastic reduction. We want to cut down the growth rate and we are confident that we can do so with the usual methods of family planning."[1]

Our National Family Planning Programme had a timely introduction receiving Government support in 1965 and forming an integral part of the socio-economic development of the Country.[2] The latter fact is important for a Family Planning Programme left to itself is ineffective but has to be "suitably blended with other social and economic development programmes to play the critical role in bringing about rapid changes."[3] It is not the availability of contraceptives but the motivation to use them which is important. The motivation is provided by socio-economic development bringing about, as mentioned earlier, urbanization, industralization, improved literacy and a higher standard of living. Making family planning part of the socio-economic development will also enable the Government to ensure that the rate of development keeps pace with and is able to support the current growth of population. Although our National Family Planning Programme is only at the

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1. Malay Mail 4/11/70, Legal Abortion not justified in Malaysia.

2 Malaysia and its NFP Programme op.cit.n.65 p4. NFPB efforts are concentrated on W. M'sia and E. M'sia is covered by FPA services.

3 Dr. Banerji, Family Planning in India, (1971), p5.

initial stage of making an impact on the population, it is making good progress.

Knowledge of Family Planning - 1966/7 & 1970

	1966/7 (5457 currently married women) %	1970 (17,365 currently married women) %
Yes	44	84.5
No	57	14.2

Table VIII[4]

Attitudes Towards Family Planning

	1966/7%	1970%
Approves	70	77.9
Depends	2	4.3
Disapproves	21	13.2
Don't Care	6	3.1

Table IX[5]

It can be seen that as compared to 1966/7, 84.5% of the respondents have known of family planning in 1970. While 21% disapproved in 1966/7, only 13.2% disapproved in 1970 with 77.9% approving. There is an increase in the percentage of women using contraceptives from 8% to 16% in 1970 too.[6] These statistics indicate a growing acceptance of the concept of family planning and its increasing popularity.

4 Interim Report on Family Planning Survey, W. M'sia (obtained as part of the 1970 Post Enumeration Survey) p40.

5 Ibid p41.

6 Ibid p42.

Progress of the Family Planning Programme

% of Acceptors	1968	1971	1972	1973
1) From those receiving monthly income of $300 or less than $300 per month	44		60.6	60
2) From those with no schooling or only primary level	49	59.8	74.8	73.9
3) From those below age of 30 years		61.7	64	66.4
4) From those with 3 or less than 3 children			55.3	58.2

Table X[7]

The above table illustrates that the programme is recruiting an increasing number from the lower income group because of the expansion of the programme into the rural sectors by incorporation into the rural health services. It is also recruiting an increasing number from the younger group. Fertility can therefore be expected to decline in the future. The increased proportion of acceptors from those with 3 or less than 3 children also indicates that the programme is reaching an increasing number of women of low parity and this is expected to lead to smaller completed family size thus resulting in decline in fertility.

The experiences of countries such as India and Japan may be used to prove that liberal abortion laws are necessary to achieve control of population growth. However, this the

7 Statistics were obtained from the 1972 & 1973 Annual Reports, NFPB, Malaysia

writer submits, is misleading. An examination into the circumstances of these countries, which necessitated the introduction of liberal abortion laws, will show why.

The reason why India failed in controlling her population through family planning was because of weaknesses in the management and organization. Also, unlike Malaysia, the efforts to promote it were not accompanied by socio-economic development needed in promoting the small family norm in the population and generating the need for family planning services.[8] On the other hand, in the East European countries, Japan and Britain, family planning services were not available at the time when the population problem was acute. In all these countries such services were introduced only after abortion was legalized or liberalized.[9] In Singapore, although the Family Planning Programme is very successful, yet there is a need to legalize abortion because of the acute population problem arising from the limited land space and the lack of natural resources. There is therefore the need to limit the family size to 2 to reduce the population growth to zero. However, Malaysia has realized her need to control and eventually stabilize her population growth early enough, before the problem becomes so acute as to necessitate

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8 Dr. Banerji op.cit.n.3 pp5 & 75.

9 Jan Stepan & Edmund H. Kelogg, The World's Laws on Contraceptives (Law and Population Manograph Services Nov.17, 1974) p3. In Britain no British Government has as yet been prepared to take an active step towards an overall population policy.

abortion. Unlike in former times, modern and effective family planning methods, such as the pill, IUD, and male and female sterilization which have been found to be safe and requires no hospitalization, are now available.[10]

There is therefore no need, in our country, to legalize abortion on socio-economic ground in order to control population.

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10 Sterilization & Abortion Proceedings, Proceeding of the 1st Meeting of the IGCC Expert Group Working Committee on Sterilization & Abortion held in Penang 3-5 Jan., 1973, p4. Sterilization is useful for couples who have completed their family size. A study in M'sia disclosed an increasing response for sterilization from woman-an increase from 3% in 1967 to 7.3% in 1971. As yet the legal status of sterilization is uncertain in M'sia as it is questionable whether it falls within the S87 of the Penal Code (FMS Cap 45). S87 provides: "Nothing which is not intended to cause death or grevious hurt (emphasis supplied), and which is not known by the doer to be likely to cause death or grevious hurt, is an offence by reason of any harm it may cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm." The question is whether sterilization falls within the definition of "grevious hurt" as defined in S320 of the Penal Code. If it does then the operation is an offence and will not be covered by the general exception provided for in S87. This point is still unsettled under our law. In Singapore, the Voluntary Sterilization Act 1969 specifically provides, in S14, that treatment for sexual sterilization shall not constitute a "grevious hurt" under S87 & 320 of the Penal Code. Malaysia should follow her example and correct the ambiguity of the law in this regard through legislation.

ii) Illegal Abortions

The prevalence of illegal abortions with their undesirable consequences on the health of the woman, have been discussed in Chapter III. This forms another major reason for legalization of abortion in this area. It has been hoped that legalization on such liberal grounds will reduce the illegal abortion rate and decrease the mortality and morbidity rates arising therefrom. In Malaysia, although the exact extent of illegal abortions and its effects on the health of the mothers is not known, it is prevalent enough to warrant attention. (refer to Chapter III). The question is whether legalization on the socio-economic ground is Malaysia's answer to the problem of illegal abortions. Will such a measure succeed in overcoming this problem?

In Britain and Japan the high rate of illegal abortions necessitating legalization could be due to the fact that at the time socio-economic development took place and motivation was thereby created to have small families, contraceptive services were not easily available. Hence resort was made to illegal abortions. In Malaysia, the situation is different for family planning services are made available as motivation, brought about by socio-economic development, is being created.[11]

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11 The good progress of our National Family Planning Programme has already been discussed. Family Planning Services are now made easily available in the rural areas where before, such services were sparse. Moreover, post partum services i.e. services after a woman has given birth, are made available too.

We can therefore expect our illegal abortion rate to be lower than experienced in other countries.

However, at present, illegal abortions still continue. This could be due to unfounded fears with regard to methods such as the pill.[12] Ignorance and indifference are contributing factors too. Education can remove such attitudes and educational programmes are being carried out as part of the National Family Planning Programme to stress the importance and need for planned parenthood. Greater use and increased popularity of family planning methods will therefore gradually decrease the number of illegal abortions[13] which arise not only because of the restrictive abortion law but also because of the lack of organized family planning assistance.[14] However, it will take time before the level of our family planning reaches that of Singapore's which has 60%[15] of all married women between 15-44

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12 Dr. D.S. Ooi, The Demand for Abortion in the Urban Malaysian Population, (Med. Journal of Malaya, Vol.XXV) p175.

13 It is acknowledged that with increased use of contraceptives there will be a greater desire for abortion in cases of contraceptive failure. Therefore, unless abortion is legalized in cases of contraceptive failure, the illegal abortions rate will not decrease. This point will be dealt with later in the paper.

14 Luke T. Lee & Arthur Larson, Population and Law (1971) p396.

15 Dr. Margaret Loh op.cit.n.96.

years currently practising it as compared to our 16%.[16] Meanwhile it is inevitable that illegal abortions will persist and the question is, how are we to solve the now existing problem?

The experience of Britain,[17] Singapore,[18] Sweden,[19] and Hungary[20] do not appear to indicate any significant decrease in illegal abortions with legalization. Shame, ignorance, delays and secrecy are believed to be the contributing factors. However, there has been a decrease in the mortality and morbidity rates. In Britain the Abortion Act[21] had the beneficial effect of reducing the number of admissions to hospitals with complications arising from illegal abortions. In 1966 the London Emergency Bed Service admitted 1363 abortion cases while in 1969 the figure was 870. In March 1966 abortion constituted 8.8% of all emergency admissions and in March 1969 the percentage decreased to 5.4%.[22] In Singapore the number of septic abortions treated in the hospitals had more than halved.[23]

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16 Interim Report op.cit.n.91 p4.

17 Callahan op.cit.n.27 p141.

18 Straits Times 6/8/74, More Illegal Abortions - Illegal Abortions are believed to go on at 10 operations a day i.e. 3560 illegal abortions a year.

19 Barnard M. Dickens op.cit.n.7 p170.

20 Callahan op.cit.n.27 p228.

21 Britain liberalized her abortion law in 1967.

22 Anthony Hordern, Legal Abortion - The English Experience 1971 p106.

23 7/11/74(Singapore papers) The Wanted Child. The statement was made by the Minister of Health, Chua Sian Chin.

We can therefore conclude that a liberal abortion law, though it may not significantly reduce the number of illegal abortions, will alleviate the health problem created thereby.

What will the position be in Malaysia? The experience of other countries indicates a great increase in the number of legal abortions with liberalization of the law. (refer to the table XI).

Legally Induced Abortion

Country	Year	Number p. a.
United States[24]	1965	7,000
	1968	18,000
	1970	193,500
	1971	485,800
	1972	586,800
England & Wales[24]	1968	22,300
	1970	76,000
	1971	94,600
	1972	108,600
	1973[25]	168,000
Japan[24]	1949	246,100
	1960	1,063,300
	1965	843,200
	1970	732,000
	1971	739,700
Singapore[24]	1970	200
	1971	3,300
	1972	3,500
	1974[26]	approximately 7,000

Table XI

24 Campbell Moore-Cavan op.cit.n.54 p256 & 257.

25 Straits Times 30/4/74.

26 This figure was obtained from a paper written by Miss X of the National Family Centre, Singapore.

The increase of abortions after legalization is especially greater in those countries just beginning to control their fertility.[27] Malaysia fall into this category and the increase can therefore be expectedly significant. Are our hospital facilities sufficiently adequate to meet the demand? Lack of facilities will only mean that people will still resort to illegal abortions.

The ratio of doctor: population in Malaysia is 1:4,434[28] as compared to 1:460 in the Soviet Union[29] and 1:1000 in Japan where 8000 physicians were also trained in the techniques of abortion.[30] Malaysia has 40 obstreticians and gynaecologists giving a ratio of 1:23,1567.[31] With regard to the bed situation

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27 Dr. Malcolm Patts, Abortion and Contraception (FPA Med. Newsletter No.45 Sept. 1972). This could perhaps account for the comparatively small increase in Singapore as she, at the time of the reform, had already a well established family planning programme. The drop since 1960 in Japan's legal abortion rate could be due also to the establishing of the Family Planning Association in 1958 and greater emphasis laid on family planning methods.

28 RecordDivision, Ministry of Health, Malaysia.

29 Sidney N. Newman, M.B. Beck, S. Lewit, Abortion, Obtained and Denied (Population Council).

30 Dr. M.K. Krishna, Abortion - Medical & Socio-Economic Aspect (A seminar organized by the FPA of India, 1972).

31 Record Division, Ministry of Health, Malaysia.

the following figures will speak for themselves. Between 1957 and 1973 the demand for beds has increased 2.8 times while the number of beds had only increased 1.68 times.[32] The average number of patients per bed per annum increased from 23.81 patients to 45.41.[33] Of the bed situation in the gynaecology wards, A. A. Sandosham, writing against legalization of abortion, has this to say, "Even with the law as it stands, the demand for beds in the gynaecology wards of our hospitals is greater than we can cope with. There are insufficient gynaecologists to judge the issue and undertake the work."[34] In Britain a great strain is placed on the National Health Services (NHS) and there is a lack of gynaecology beds in the hospitals and encroachment on operating theatre time and out-patient time by abortion cases.[35] Reluctance to co-operate by certain gynaecologists, anaesthetists and other medical staff aggravates the situation. Due to the emergency nature of abortion cases

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32 Third Malaysia Plan, IAPG on Health and Social Services, Patient care service - Consolidation and changing Emphasis In the Development of the Patient Care Service. (Issued by the Ministry of Health, Malaysia).

33 Ibid

34 A.A. Sandosham, Legal Abortion (Med Journal of Malaya Vol XXII, 1968) p167, 170. This was confirmed by interview with Dr. Cherian, a gynaecologist in the General Hospital, and Dr. Shamsuddin, Director of the NFPB.

35 Gordon King MD, Paper 8 - Merits & Demerits of Legalized Abortion (IPPF Western Pacific Regional Seminar Family Planning & Maternal & Child Health Proceedings 1972, Seoul) p84, 86.

they have to be given priority and this results in undue delay in dealing with patients suffering from other gynaecological conditions needing operations but unable to secure admission to hospital because "of the preponderance of abortion cases."[36] "Some concern was also felt on account of the large number of abortions being carried out each day in some of the clinics without adequate pre-operative and investigation of post-operative morbidity, or of advice given on the future use of contraceptive methods, or on the avoidance of further pregnancies by a sterilizing operation, which could obviate the need for further abortions."[37] Owing to shortage of beds and staff patients leave beforelonger term repercussions become apparent. To legalize abortion on such liberal grounds in Malaysia when her hospital facilities are inadequate would be exposing her to the same problem as is now facing Britain. Granted that with legalization a fair proportion, as in Singapore, will go to the private sector for abortion. However, the question is whether our private section will be able to complement the inadequacies in the hospitals in this regard. The impact of bed population ratio of private hospitals is not very significant and the contribution of private maternity and nursing homes is

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36 Ibid p86.

37 Gordan King op.cit.n.35 p87. Note that it is important to provide for pre-operative counselling because a woman wanting abortion is often ambivalent and needs to be counselled to ensure that she is sure of her decision to avoid any undesirable psychological consequences.

declining.[38] Moreover it is questionable whether our less affluent society will be able to afford the often exorbitant rates charged by the private sector.

Granted that at present medical services are inadequate to meet with the abortion demand that will arise with legalization, however it may be contended that the Government can provide for more gynaecologists and in-patient services to meet the need. However, this will take time and as far as the present is concerned, hospital facilities are inadequate. Moreover, it is questionable whether the Government should give priority to the field of abortion when the need for doctors and in-patients services in the other fields of medicine is great too. (Refer to the statistics on doctor: population ratio and on the demand for beds, given earlier).

However, it may be contended that while abortion in the later stages of pregnancy[39] require hospitalization and would therefore constitute a burden on the hospital services, Menstrual Regulation done at 8 weeks and below would not, as it

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38 3rd Malaysia Plan, Medical & Health Services in the Private Sector, Ministry of Health, Malaysia, p6 & 7.

39 This would refer to pregnancy beyond 8 weeks. The suction method is no longer used and methods such as the D & C, hysterotomy, etc. which require hospitalization are used. A study on 200 women in India revealed that only pregnancy up to 8 weeks should be terminated on an out-patient basis because of risks of incomplete abortion and perforation of the uterus with increased gestation - Rohit v. Bhatt & Jyotana M. Soul: Out-patient Termination of Pregnancy in India - Scope & Limitation p62.

requires no hospitalization and is a simple procedure which can be used in small out-lying clinics.[40] Moreover, Menstrual Regulation has been found to be morally and medically more acceptable. There could, therefore, perhaps be legalization of Menstrual Regulation on socio-economic grounds as a solution to the health hazards caused by illegal abortions. However, the opposing argument arises as to its effects on contraceptive use. A review of 496 Menstrual Regulation cases in Singapore found that post Menstrual Regulation counselling appeared to be an effective means of recruit for other fertility control measures. Before the Menstrual Regulation was performed, 20.6% had used no contraceptive method while after it, only 1.2% were using no method.[41] In India, in a Family Planning Hospital in Bombay, 90.5% of women undergoing Menstrual Regulation accepted some method of family planning.[42] However, a study by Dr. O.S. Ooi on the demand for abortion in the urban Malaysian population revealed that 93 of the patients (43.5% of the patient total) had practised some form of modern contraception in the past but found the disadvantages and fears of the methods greater than the dangers of an abortion. He found that despite the availability of contraceptive some

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40 MR - Family Planning Hospital, Bombay Transaction of Scientific Papers by IFRP contributors at the 17th All India Obstreticians & Gynaecologists Congress held at Agra Feb.3-8 1974 p21.

41 Dr. V. Vengadasalam op.cit.n.56 p321,326.

42 MR - Family Planning Hospital loc.cit.n.40 p28.

women still resort to repeated abortion as a method of contraception.[43] Although one may tend to think that a woman who fears contraceptive would also fear Menstrual Regulation, yet the above finding shows otherwise. The finding casts doubt on whether legalizing Menstrual Regulation would indeed not affect the acceptance and use of contraceptive methods in Malaysia in view of the fears still prevalent among Malaysian women.[44]

Another argument disfavouring such a reform is that the Family Planning Programme is aimed at establishing family planning as a way of life and at instilling the sense of sexual responsibility. Thus the reform may upset the Government's policy in this respect as it may encourage people to rely on abortion more than on contraceptives. As stated earlier, 43.5% of the patients in Dr. O.S. Ooi's study found the fears of contraceptive more than the dangers of abortion. 44 of the patients were found to have practiced no method of contraception and of these, only 10 never started on the oral contraceptive pill because of ignorance. The majority did not do so because of

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43 Dr. O.S. Ooi op.cit.n.12 pp175, 179.

44 Interviews with Dr. Cherian of the G.H., Prof. Puvan of the U.H., Dr. Subiah and Dr. Shamsuddin of the NFPB all reveal contradictory opinions whether legalization of MR will affect the progress of family planning. Although the findings in Singapore and India prove that it would not, yet the finding of Dr. Ooi proves otherwise. The matter is still unsettled in our country and research will have to be made into the attitudes of Malaysian women to abortion and contraception.

fear.[45] To legalize MR at such a stage when our Malaysian women still possess unfounded fears with regard to the modern form of contraceptives, may well upset the Government's intention of establishing family planning as a way of life and in instilling the sense of sexual responsibility.[46]

There is a need, therefore, for further research into the question of the extent to which legalization of MR on socio-economic grounds will affect the Malaysian Family Planning Programme as against the extent to which it will succeed in solving the health problem. There is a possible conflict of interest here which can only be resolved through careful and detailed research.

iii) Unwanted Children

The third major reason for reform here is the problem of unwanted children. The favourite slogan of the pro-abortion reformers is, "Every child a wanted child." A Swedish study was made on the life history of 120 children, born after the mothers were refused abortion on psychological grounds, through to 21 years. This found that the children had a statiscally higher rate of psychological disturbances, criminal and other anti-social behaviour.[47] The study therefore concluded that "the very fact a woman applies for abortion means that her subsequent

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45 Dr. O.S. Ooi op.cit.n.12 p177.

46 This argument receives support from Dr. Subiah of the NFPB.

47 Callahan op.cit.n.27 p77.

child, if she is refused, will have to surmount greater social and marital handicaps than children who had been wanted ...".[48]

However, the assumption appears to be that unwanted pregnancies result in unwanted children. Is this true? The writer submits that it is not for other writings prove otherwise. Pregnancies are known to have psychological effects and A. Robin, N. Pleshette, M. Tobin and B. Jansson, all stressed "the prevalence in normal women of anxiety, ambivalence and strain when faced with pregnancies."[49] "Rejection impulse is frequently matched by equally strong response to have the child, this is why ambivalence, stemming from silmultaneous but contradictory impulses, seem so characteristic of pregnancy."[50] " It all depends on which impulse gets the upper hand. Mere existence of hostility towards the foetus therefore is no conclusive indication that the child is unwanted. There is as yet no proved corelation between the desire for abortion and subsequent failure in the demands of motherhood."[51] An important study done recently on women with a) very wanted and b) very unwanted pregnancies and their attitudes during pregnancies compared

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48 Ibid p77.

49 Ibid p52.

50 Callhan op.cit.n.27 p57.

51 Ibid p77.

with their love for the baby after birth, found that most of the women who felt regretful about the pregnancy grew to love the child. The conclusion of the study was that, "Initial feelings about pregnancy are predicative of how a mother will eventually feel about her child to only a very limited degree."[52]

However, it is true that a proportion of unwanted pregnancies result in unwanted children. Nevetheless, if the patients do not want the child, they can give it away for adoption. In Malaysia, the demand for adoption at present exceeds the supply.[53] In a very recent article in the Malay Mail, it was reported that there were only 37 babies left for adoption in the institutions operated by the Welfare Services Ministry throughout Malaysia. There is a clearly limited supply of babies for adoption in the country.[54] If patients prefer to keep the child, then the child can no longer be termed unwanted, can it?

Contraceptive methods are available to those whodo not desire to conceive. Mrs Winnifred Taylor, writing to the editor of the Straits Times, rightly pointed out that the slogan "Every child a wanted child" should be replaced by

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52 Dr & Mrs J.C. Wilke, Handbook on Abortion (1973) p52.

53 This fact was obtained from a social welfare personnel in the Ministry of Social Welfare, Kuala Lumpur.

54 Malay Mail 25/6/75: Only Few Babies left for Adoption.

another, "No couple should risk conceiving a child they are not prepared to bring up." This places the responsibility where it belongs.[55]

It should be noted that in the earlier three grounds - medical, eugenic and rape, family planning methods do not serve as a suitable and effective alternative thereby further justifying the adoption of a measure such as abortion. However, with regard to the socio-economic ground, the methods serve as an effective and much safer alternative.

A woman who has access to means by which she can prevent an unwanted conception and yet refuses to avail herself of the means but resorts to abortion, is acting irresponsibly. She is not only depriving the child of the right to life (a moral argument which may not be acceptable to all) but she is a burden on the already overtaxed medical services, and is unnecessarily endangering her health.[56] Such a person who is <u>able</u> but <u>unwilling</u> to comply with the law which does not permit abortion on socio-economic ground but has provided her with a suitable alternative, is precisely the one who should receive the condemnation of the law.

However, while family planning methods are effective in combating the above problems, it is generally acknowledged that with increasing desire to control one's fertility and use

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55 Anthony Hordern op.cit.n.22 p200.

56 Even in MR the long-term effects are as yet unknown.

of contraceptives, there is a correspondingly increasing desire for abortion in cases of contraceptive failure.[57] A report by a WHO scientific group revealed that couples who practice contraceptives have higher rates of abortion than those who do not.[58]

In Singapore, the prevalence of illegal abortions and their harmful effects on the health of the mother, despite the success of the Family Planning Programme, could be attributed to the failure to recognise the above fact and to therefore make a timely provision for abortion in cases of contraceptive failures. Malaysia, even as she begins to control her fertility, should therefore realize the need to legalize abortion in cases of contraceptive failures and avert the consequences which would otherwise flow from a successful family planning programme. This would, at the same time, serve as an incentive for people to adopt family planning methods.

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57 The pill is virtually 100% effective while the other methods such as the IUDD, condom, etc. are not. The IUCD is only 98% effective.

58 Report by WHO Scientific Group, Spontaneous & Induced Abortion, WHO Technical Report Seminar No.461, Geneva 1970, p.34. This finding receives support from other writers. Dr. Malcolm Potts, Abortion & Contraception, FPA Med. Newsletter No.45, Sept. 1972: He writes that the probability of a pregnancy ending in abortion is greater among contraceptive users and he substantiates this with surveys in various countries. Emily Campbell Moore-Cavan op.cit. n.54 writes at p640 that contraceptive users tend to be aborters more than non-contraceptive users.

Contraceptive failure can arise from patient failure or method failure.[59] However, the difficulty of disproving contraceptive failure will open the law to much abuse. The law needs therefore to provide for safeguards such as having at least two qualified medical practitioners to affirm that the patient is a genuine case.

The period should also be limited to not more than 8 weeks. The advantages of so limiting it have already been discussed. The family planning units and certain private practitioners can provide for such abortion facilities. This will reduce the work load which would otherwise be incurred on the out-patient departments in the hospitals. Limiting it to 8 weeks will also ensure that even if the law is abused thereby resulting in large numbers requesting for abortion, there will be no undue pressure on the hospital facilities.[60]

It may be contended that since some measure of abuse will inevitably occur and the whole concept of "abortion in

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59 Patient failure means the patient fails to use the method correctly. Method failure means the patient has used it correctly and yet she conceives becuase of some defect in the method itself.

60 This is because MR requires no hospitalization and is a simple and safe procedure which can be undertaken outside the precincts of a well equipped hospital.

cases of contraceptive failure" may well amount to abortion on demand in practice, why not so legalize it? The answer lies in the negative for reasons which will subsequently be dealt with.

e) Abortion on demand

i) Foetus part of the mother

Those who advocate for abortion on demand often support their stand on the ground that the foetus is part of the mother who can therefore do what she likes with it. However, this is to ignore medical realities which have proven that the foetus and embryo, save for the source of nourishment, "is genetically and morphologically quite clearly distinguishable from the woman's body."[61] It possesses its own separate nervous system and blood circulation, with its own skeleton and masculature, its own brain and heart and vital organs.[62] Moreover, it is difficult to consider the embryo or foetus as her property since it took the contributions of the male too to produce the foetus. "His genetic contribution is as constituitive of the foetus as hers is."[63]

ii) Freedom of the Woman

Advocates of legalized abortion contend too that to force a woman to continue with an unwanted pregnancy is to

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61 Callahan op.cit.n.27 p463.

62 Mr Radhakrishnan Menon FRCS, MRCOG., The Case Against Legalized Abortion, Berita MMA, No.4, Nov/Dec. 1974 p2.

63 Callahan op.cit.n.27 p463.

impose a servitude upon her since she is forced to have a baby she does not want. However, this is untrue for she has always the liberty to refuse sexual intercourse or to adopt some method of family planning to avert an unwanted pregnancy.[64] Moreover, to argue on this basis would mean too that the husband has as much a right to decide in the matter for is he not the one who generally has to bear the economic support of the child? In any case, sexual freedom does not mean sex without responsibility and if a couple does not want a child, they should adopt the appropriate measure to prevent a conception.

iii) Right of Privacy

It is said that the decision to abort lies within the realm of an individual's right to privacy. If a woman wants to abort, then it is her personal right to do so. However, the right of privacy extends only in so far as it does not encroach upon the state's interests. In the area of abortion the State should have some measure of control over the decision to abort because it involves the question of population growth, health, medical practice and facilities, and the progress of family planning.

iv) Unwanted children, population control and illegal abortions

These points have already been dealt with earlier and the writer will not therefore delve further into them.

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64 Under the suggested reform, failure of contraceptives will entitle her to an abortion and there is no violation of her "freedom".

Besides the arguments that have already been forwarded above, it is highly questionable whether abortion on demand would be acceptable to the Malaysian population. A public opinion poll of 3140 married women in Japan, conducted in 1965, revealed that only 16% approved of abortion on demand.[65] In Britain only 6% were in favour.[66] The MMA survey of doctors shows only 42.86% in favour.[67]

Such a reform would also be against the Islamic faith for, as shall be seen later, the Islamic law in Malaysia permits abortion below four months and only on justifiable grounds in the interests of the mother. Since Malaysia is a Muslim country, unlike countries like Singapore which is a secular state, cognizance needs to be given to Islamic Law.

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65 Campbell Moore-Cavan op.cit.n.54 p173.

66 Ibid p165.

67 MMA op.cit.n.37.

Chapter V

ISLAMIC LAW

The present law on abortion applies to both Muslims and the non-Muslims. The question now is whether the reform suggested in the earlier chapter will be consonant with Islamic Law principles.

According to Islamic authorities the foetus is divided into two parts - the foetus with a soul or life and that without. The foetus is said to acquire a soul or life after the 4th month of gestation.[68] There is a consensus among the Muslim theologians that where the life of the mother is endangered abortion can be induced regardless of the period of gestation.[69] The same consensus exist that abortion induced after 120 days constitutes a sin (haram) and a criminal offence as at this stage, "the foetus is not only complete in its creation but also has a life of its own."[70]

With regards to the foetus without a soul (i.e. before 120 days), there exist two main Schools of Thought. The first School holds that it is no offence or sin as the foetus does not consitute life. However, the second School holds that it is a sin because the foetus has already "such a kind of life

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8 Haji Mohammed Sonusi Mahmood, Abortion, (Sedar - A Journal of Islamic Studies, New Series No.2, 1969/70 Issue) p27. See further Islam R. Nazar, Induced Abortion p348 - 358.

9 Islam R. Nazar, Induced Abortion p348-358.

0 Haji Mohammed loc.cit.p27. See also Islam R. Nazar, Induced Abortion, p348-358.

which is growing, developing and preparing to live."[71]

In Malaysia, abortion below 4 months is permitted theoratically though not in practice. However, justifiable grounds must be present in which the interests of the mother and not that of the foetus, will be considered.[72]

It would appear therefore that the reform suggested would not be inconsistent with Islamic Law. The reform would basically limit abortion to 16 weeks and less when permitted, save where the life of the mother is in danger. Also, the suggested reform does not permit abortion on demand but only on certain justifiable grounds.

It would be relevant to note that one key characteristic of the Islamic Law is its relatively high degree of flexibility which enables it to adapt to changing social conditions. However, it is this same flexibility, which subjects the Islamic Law to differing interpretations, (especially with regard to such grey areas) which leads one to expect opposition from some of the Muslim religious leaders to any liberalization of our abortion law.

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71 Haji Mohammed op.cit.n.70 p28.

72 These facts were derived through an interview with Professor Ahmad Ibrahim, Dean of the Faculty of Law, University of Malay, who is an acknowledged scholar on Islamic Law in Malaysia.

CONCLUSION

Abortion has been and will continue to remain a highly controversial subject. This will be especially so in a country like Malaysia, where religion plays a significant role in influencing the lives of men and women. The writer has advocated a reform which she feels will be suited to our Malaysian context.

The writer has, in the paper, shown the need to legalize abortion on medical, eugenic and rape cases. However, she has found no need to legalize abortion on the socio-economic ground. This is because a more suitable, and effective alternative lies in family planning methods in combating the problems and meeting the needs of the population in this area. However, it is submitted that there is the now present problem of the health hazards, caused by illegal abortions, which need to be solved. The experience of several other countries have shown that legalization of abortion on the socio-economic ground, although it did not significantly reduce the illegal abortion rate, did help to alleviate the health problem. However, it was found that to legalize abortion after 8 weeks was not suitable in view of our inadequate medical services. The question that lies open is whether abortion at 8 weeks and below should be legalized having regard to its possible effects on the progress on family planning in our country.

Nevertheless, recognizing the fact that no family

planning method is 100% effective, provision has been made that abortion be legalized in cases where the methods fail. This will help prevent resorting to illegal abortions in the event of contraceptive failures.

In the paper the writer has stressed greatly on the superiority of contraceptive methods as opposed to abortion in situations where the former serves as an effective alternative. The Government needs to forge ahead with her Family Planning Programme to prevent problems such as overpopulation and illegal abortions, from becoming so acute as to necessitate the legalization of abortion on too liberal grounds as has been the case in several other countries such as Japan, Singapore and Britain. Such an action will only incur further difficulties by way of medical services and opposition from religious bodies. For example, in Japan, the "unforseen widespread practice of induced abortion gave rise to criticism from the moral view point"[73] and the Government was forced to take some "effective counteraction" and to try and replace induced abortion by contraception. Britain is reconsidering deliberalizing her abortion law. Czechoslovakia deliberalized her abortion laws in 1962 while Hungary deliberalized hers in 1974.[74] Rumania, who liberalized her law in 1956, deliberalized

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73 Takuma Terao, Impact of Family Planning Programmes on Incidence of Abortion, Proceedings of the IPPF International Conference, Chile, Aug.1967 p220-222.

74 Campbell Moore-Cavan op.cit.n.54 p605.

it again in 1966.[75] Whatever may be the reason each of these countries have for deliberalization, the writer submits that the act of deliberalization indicates that liberal abortion laws are not without difficulties too. Difficulties can be more readily expected in a religious and multi-racial society such as ours. To avoid them the Government should therefore press ahead with her Family Planning Programme with a greater spirit of urgency.

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75 Campbell Moore-Cavan op.cit.n.54 p605.

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